

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STEPHAN RIPP, *et al.*
Plaintiff

v.

OCCIDENTAL FIRE & CASUALTY
COMPANY OF NORTH CAROLINA
Defendant

§ CIVIL ACTION NUMBER
§ 4:20-cv-00696
§
§ JUDGE CHARLES ESKRIDGE
§
§
§
§

PLAINTIFF'S MEMORANDUM IN SUPPORT
OF MOTION FOR VOLUNTARY DISMISSAL

TO THE HONORABLE CHARLES R. ESKRIDGE, III, U.S. DISTRICT JUDGE:

Plaintiff Stephan Ripp, *et al.*, asks the Court to dismiss Plaintiff's suit against Defendant Occidental Fire & Casualty Company of North Carolina as Federal Rule of Civil Procedure 41(a)(1) authorizes and shows:

1. A court should freely grant a motion for voluntary dismissal as long as the nonmovant will not be prejudiced. *Versa Prods., Inc. v. Home Depot, USA Inc.*, 387 F.3d 1325, 1327 (11th Cir. 2004); *see* Fed. R. Civ. P. 41(a)(2); *Cone v. W. Va. Pulp & Paper Co.*, 330 U.S. 212, 217 (1947).

2. Plaintiff diligently moved for dismissal once it became apparent dismissal necessitated. *See Ohlander v. Larson*, 114 F.3d 1531, 1538 (10th Cir. 1997). Specifically, on January 19, 2022, the Court considered various motions, but held in abeyance ruling no sooner than February 2nd on Defendant's motions for summary judgment and attorney fees. Dkts 30 and 39. After due consideration, Plaintiff has decided to withdraw his claims with prejudice.

3. Dismissal will not prejudice Defendant. *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001); *Pontenberg v. Boston Scientific Corp.*, 252 F.3d 1253, 1255-56 (11th Cir. 2001); *see*

Cnty. of Santa Fe, N.M. v. Pub. Serv. Co. of N.M., 311 F.3d 1031, 1049-50 (10th Cir. 2002).

4. Plaintiff requests the dismissal be with prejudice to refiling the suit.
5. Defendant has not filed a counterclaim.
6. Defendant is unopposed to this stipulation to dismissal of this suit.

CONCLUSION

7. Plaintiff asks the Court to dismiss the suit with prejudice to refiling for these reasons.

Respectfully submitted,

/s/ **Eric B. Dick**

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**ATTORNEY-IN-CHARGE FOR
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CERTIFICATE OF SERVICE

I, Eric B. Dick, LL.M., certify I electronically filed a copy of this memorandum on the CM/ECF system which will be served on the following attorney-in-charge for Defendant Occidental Fire & Casualty Company of North Carolina February 2, 2022.

VIA E-FILING

Connor R. Adamson

Of Counsel

Gault, Nye & Quintana, L.L.P.

E-Mail cadamson@gnqlawyers.com

By: /s/ **Eric B. Dick**

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CERTIFICATE OF CONFERENCE

I certify my Paralegal conferred with Connor R. Adamson, Defendant Insurer's Counsel on Plaintiff's Memorandum via E-Mail February 1, 2022. Defendant Insurer's Counsel conferred with my Paralegal and indicated Defendant Insurer's Counsel is not in opposition to Plaintiff's Memorandum via E-Mail February 2, 2022.

SIGNED February 2, 2022.

/s/ Joe Synoradzki

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